

Powers of Attorney

OFFICE OF THE COMMAND JUDGE ADVOCATE

CAMP SHELBY JOINT FORCES TRAINING CENTER

CAMP SHELBY, MS.

What is a Power of Attorney?: A POA is a document that authorizes someone else to act as your agent. For example, you might grant a POA to a friend authorizing your friend to act as your agent to sell your car, ship your household goods, or obtain medical care for your child. The "grantor" of the POA is the person who makes the POA. The "agent" is the person authorized under the POA to act for the grantor. The agent must be at least 18 years of age and should be trustworthy and mature. A POA can be a great tool in preparing for deployments or for arranging your affairs if you know you can not be present. A POA must be signed in front of a notary to become effective.

What are the Types of Powers of Attorney?: There are two types of POAs: a special and a general. A special POA only allows your agent to do specified acts. For example: "I authorize my wife, Jane Doe, to register my 1999 Ford Escort with the State of Mississippi when its current registration expires." On the other hand, a general POA allows your agent to do any and all things that you could legally do yourself. You should be careful before granting anyone a general POA since you are allowing the agent to do anything in your name. In general you should always exercise great care in selecting your agent and never utilize a general POA if a special POA will suffice.

When Does the Power of Attorney Expire?: A POA prepared in this office is generally good from 12 to 18 months. However, the grantor may specify a shorter period of time and may revoke the POA at any time. If the grantor wishes to revoke the POA he should retrieve and destroy all the copies and the original. A POA will also generally be automatically revoked upon death or incapacity of the grantor.

What Are Some of the Things a Special Power of Attorney can do?: You can use a special power of attorney to allow someone to do almost all legal actions that you can do yourself. Thus, for example, you could prepare a special power of attorney that lets your designated agent:

1. Buy or sell real estate;
2. Purchase a car or sell your furniture;
3. Sign your paycheck or withdraw money from your bank account;
4. Admit your child to the hospital for needed medical care;
5. Ship or store your luggage and household goods;
6. Sign your name to a lease or an agreement to connect utilities, such as electricity, gas, oil or telephone service;
7. Cash or deposit tax refund checks or transfer stocks and bonds.

Are There Any Things a Power of Attorney Cannot Do?: While a power of attorney will be accepted as valid for most purposes, in some states, there are some items that cannot be accomplished by using a power of attorney because these actions are so personal in nature that they cannot be delegated to another. Thus, for example, a marriage ceremony or the execution of a will cannot be done by power of attorney. In addition, there are times when a certain form of power of attorney is required and none other will be accepted -- an example is the special form of power of attorney used by the Internal Revenue Service when a person allows a friend or relative to cash an IRS refund check.

Why Doesn't Everyone Have a Power of Attorney?: A power of attorney can be very useful if you have one in effect when you need it. But a power of attorney can be abused as well as used; there can be disadvantages to having one as well as advantages. A husband who just separated from his wife might use the power of attorney she gave him to clean out her individual bank account. A well-meaning older person might give a power of attorney to a younger relative, only to discover that the relative squandered and spent the assets of the older person. A power of attorney always has the potential for being a very helpful or a very dangerous document for those reasons. The important thing to remember is that you are going to be legally responsible for the acts of your agent. Therefore, you must exercise great care in selecting the person to be your agent.

What Steps Can I Take to Prevent Improper Use of My Power Of Attorney?: There is no way to guarantee your power of attorney will not be misused. Here are some guidelines and precautions that will help prevent abuse:

- 1) Never have a power of attorney unless you need one.
- 2) If you feel you might need a power of attorney, have one prepared but don't sign it until you need it.
- 3) Always put an expiration date on your power of attorney; never make a power of attorney that lasts indefinitely.
- 4) Make sure your expiration date is for a fairly short period of time. While this will vary from one person to another, periods of one, two or three years are not uncommon on powers of attorney.
- 5) Never use a general power of attorney when a special one will do.
- 6) If you want to cancel or terminate a power of attorney before it expires, you can prepare and execute a Revocation of Power of Attorney. Give a copy of the revocation to any person that might deal with the person to whom you gave your power of attorney. In some states you may also record the revocation in the county register of deeds office where the original power of attorney was recorded or was to be used. Just remember that it is usually impossible to cancel effectively a power of attorney, since the safest way to do this is to get back the original and all the copies that you have given to your agent, as well as all the photocopies that may have been made by banks, realtors, merchants, landlords and other people who are relying on the power of attorney you have signed.

Are There Any Special Requirements For Powers of Attorney?: A power of attorney must always be signed in front of a notary public. If you wish, it can be recorded at the county register of deeds office in the state where it is to be used. When a power of attorney is used to transfer

land or to do business on behalf of a person who has become incapacitated, it must be recorded. As a general rule, however, a power of attorney does not need to be recorded in order to be effective.

Does a Power of Attorney Expire Upon My Death or Mental Incapacity?: A power of attorney expires on the death of the grantor (the person signing it) or of the agent named in it (unless a substitute agent is named). Many people choose to have an additional clause in a power of attorney that makes provision for its continued existence in the event of mental incapacity. This type of power of attorney is called a durable power of attorney. In some states, such a power of attorney must be recorded at the county register of deeds if the grantor later becomes mentally incapacitated. You should remember, however, that a valid power of attorney must be signed while the grantor is sane and mentally competent. If the grantor wants to prepare a power of attorney that only becomes valid upon his or her incapacity, that document can also be prepared by this office, and it is called a springing power of attorney because it "springs to life" upon the grantor's incapacity.

Must a Business Recognize a Power of Attorney?: No. There is no legal requirement that anyone recognize a POA. Most business will recognize the document, but some may not. Some businesses or banks require that the power of attorney be recorded while others do not. Some banks will accept only a special power of attorney. The best rule is to check with the business or bank before obtaining or using a power of attorney to be sure that it will be accepted.

What if My Agent Abuses the Power of Attorney?: This happens fairly often which is why you need to be careful in choosing your agent and limiting their authority. If the agent does abuse his power, you are generally liable to third parties for all of your agent's actions if the actions were authorized under the plain language of the POA and the third party reasonably relied on the POA. You may be able to sue your agent for reimbursement of the loss you incur, however, that is a time-consuming, difficult and expensive process.

How Can the Legal Assistance Office Help Me with Powers of Attorney?: We can provide you with the paperwork for a special or a general POA. We also have a notary who can notarize the document.

All information compiled from materials provided by the Judge Advocate General's School of the Army and Legal Assistance website, as well as, information provided by other Army Legal Assistance Offices and by the North Carolina State Bar's Special Committee on Military Personnel, in conjunction with the American Bar Association's Standing Committee on Legal Assistance for Military Personnel.